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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/791,447

03/02/2004

Janzen Lo

BBM-147US

3444

23122 7590 10/06/2009  
RATNERPRESTIA  
P.O. BOX 980  
VALLEY FORGE, PA 19482

EXAMINER

HOFFMAN, MARY C

ART UNIT

PAPER NUMBER

3733

MAIL DATE

DELIVERY MODE

10/06/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/791,447	<b>Applicant(s)</b> LO ET AL.	
	<b>Examiner</b> MARY HOFFMAN	<b>Art Unit</b> 3733	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 13 May 2009.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1 and 3-21 is/are pending in the application.
- 4a) Of the above claim(s) 6-19 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3-5,20 and 21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 02 March 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 3-5 and 20-21 are rejected under 35 U.S.C. 102(e) as being anticipated by Zucherman et al. (US 2008/0027552).

Zucherman et al. disclose an implant insertion device (FIG. 194) comprising: an insertion rod (5010) having a longitudinal axis; and an implant gripper (5030) attached to the insertion rod, the implant gripper including: a v-shaped gripping surface intersecting the longitudinal axis of the insertion rod; a first pin extending from and fixed relative to the v-shaped gripping surface; and a second pin extending through and movable relative to the v-shaped gripping surface between a first position wherein the second pin extends from the v-shaped gripping surface a distance x and a second position wherein the second pin extends a distance less than x from the v-shaped gripping surface, wherein the first pin and the second pin are offset on the v-shaped gripping surface and extend in a non-parallel manner.

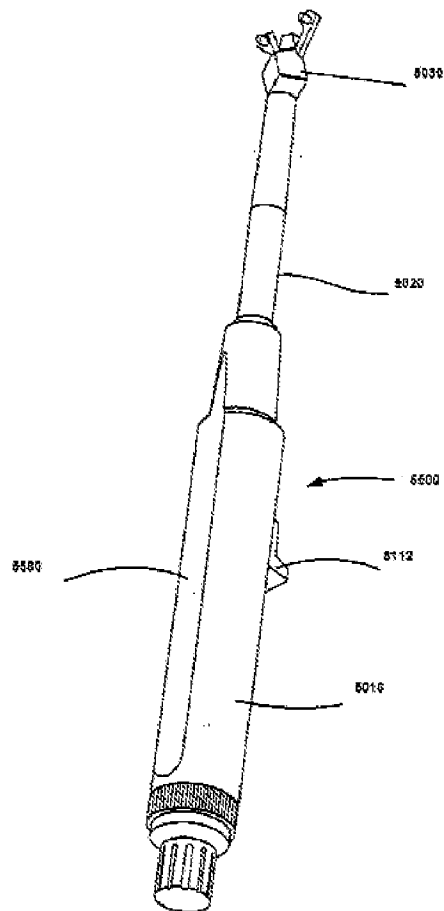


FIG. - 194

The first pin and the second pin are offset on the gripping surface by an angle of approximately 30 degrees. The first pin and the second pin are smooth. The implant gripper is removable from the insertion rod.

Zucherman et al. further disclose an implant insertion device (FIG. 194, also see FIGS 188a-188c) comprising: an insertion rod having a longitudinal axis; and an implant gripper extending from the insertion rod, the implant gripper including: an implant gripping surface intersecting the longitudinal axis of the insertion rod; a first pin extending from and fixed relative to the implant gripping surface; and a second pin

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extending through and movable relative to the implant gripping surface, the second pin being substantially aligned with the longitudinal axis of the insertion rod and non-parallel to the first pin.

Zucherman et al. further disclose an implant insertion device (FIG. 194, also see FIGS 188a-188c) comprising: a handle (see bottom of FIG. 194) having a gripping surface; an insertion rod extending from the handle, the insertion rod defining a longitudinal axis; an implant gripper extending from the insertion rod, the implant gripper including: an implant gripping surface intersecting the longitudinal axis of the insertion rod; a first pin extending from and fixed relative to the implant gripping surface; and a second pin extending through and movable relative to the implant gripping surface, the second pin being substantially aligned with the longitudinal axis of the insertion rod and non-parallel to the first pin; and an actuator positioned proximal to the handle for moving the second pin relative to the v-shaped gripping surface.

### ***Response to Arguments***

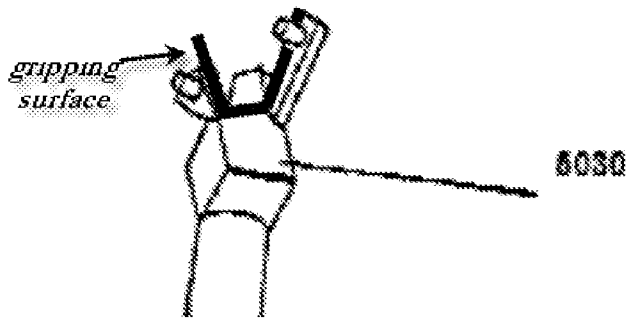
Applicant's arguments filed 05/13/2009 have been fully considered but they are not persuasive.

Applicant argues that pins 5560 do not extend from a gripping surface intersecting the longitudinal axis of the insertion rod, and a second pin that extends through and is moveable relative this gripping surface. The examiner respectfully disagrees. As seen in the below marked-up figure, the pins 5560 extend from the

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gripping surface. It is noted that the term "extend" can be interpreted broadly.

Moreover, the gripping surface intersects the longitudinal axis of the rod.



The rejections are deemed proper.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **MARY HOFFMAN** whose telephone number is

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(571)272-5566. The examiner can normally be reached on Monday-Thursday 10:00-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo C. Robert can be reached on 571-272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Mary C. Hoffman/  
Examiner, Art Unit 3733  
/Eduardo C. Robert/  
Supervisory Patent Examiner, Art Unit 3733